

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
ROBERT LINDSAY,)	
Plaintiff)	
)	
v.)	
)	CIVIL ACTION NO. 12-11714-PBS
WELLS FARGO BANK, N.A., as)	
Trustee for Carrington)	
Mortgage Loan Trust Series)	
2006-NC5 Asset-Backed Pass-)	
Through Certificates,)	
Defendant)	
_____)	

MEMORANDUM AND ORDER
September 11, 2013

SARIS, U.S.D.J.

After review of the objection, the Court adopts the Report and Recommendation, but the Court must address an issue not presented to the magistrate judge based on new caselaw.

Plaintiff has raised a new argument that the magistrate judge erred in holding that the prospective ruling in Eaton v. Federal Nat'l Mort. Assn., 462 Mass. 569, 588 (2012) does not apply to him because he advanced the same argument during the pendency of the Eaton matter. His argument is based on two recent cases from the Massachusetts Appeals Court. See Lyons v. Mortgage Electronic Registration Sys., 83 Mass.App.Ct. 1134, 1134 (June 5, 2013) (unpublished); HSBC Bank USA, N.A. v. Norris, 83 Mass.App.Ct. 1115, 1115 (Feb. 28, 2013) (unpublished). His argument is unpersuasive because his case is in a different procedural position from these two unpublished cases from the Massachusetts

Appeals Court, which were on appeal when Eaton as decided. See Koufos v. U.S. Bank N.A. 2013 WL 1189502 *11 (March 21, 2013) (holding Eaton is inapplicable to plaintiff who was in federal district court, not the state Appeals Court, at the time Eaton was decided).

/s/ Patti B. Saris
PATTI B. SARIS
United States District Judge